

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,  
MARISSA BLAIR, APRIL MUNIZ, MARCUS  
MARTIN, NATALIE ROMERO, CHELSEA  
ALVARADO, JOHN DOE, and THOMAS  
BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM**

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO THIRD PARTIES  
JOHN HILL AND DENISE LUNSFORD'S REQUEST FOR COST-SHIFTING**

Pursuant to this Court's June 26, 2020 Order (Dkt. 783), on July 10, 2020, Plaintiffs filed an Opposition to Third Parties John Hill and Denise Lunsford's Request for Cost-Shifting (Dkt. 801), which detailed why the Court should (a) deny third parties Hill and Lunsford's request to shift to Plaintiffs the costs Hill and Lunsford allegedly incurred complying with Plaintiffs' subpoenas ("Subpoenas"), and (b) not order Plaintiffs to pay the \$9,915.13 invoice Lunsford claims represent her costs of complying with the Subpoena. Plaintiffs file this supplemental brief to address another invoice for \$7,341.35, which Lunsford recently presented to Plaintiffs for payment, claiming it represents additional costs of compliance with the Subpoenas.

In support thereof, Plaintiffs state as follows:

1. On January 27, 2020, Plaintiffs issued the Subpoenas to Defendant James Fields' criminal attorneys, Hill and Lunsford.
2. On February 20, 2020, Hill and Lunsford each filed a motion to quash the Subpoena, which the Court denied on June 12, 2020. Dkt. 765.
3. On June 18, 2020, Hill and Lunsford filed a motion to reconsider the order denying their motions to quash and requested the Court shift the cost of complying with the Subpoenas to Plaintiffs. Dkt. 770.
4. On June 26, 2020, the Court denied in part and granted in part Hill and Lunsford's motion to reconsider and granted their request to shift the cost of compliance with the Subpoenas to Plaintiffs. Dkt. 783. The Court issued this order before Plaintiffs had an opportunity to respond to the request for cost-shifting, so the Court allowed Plaintiffs to file a motion asking the Court to reconsider its cost-shifting ruling within 14 days. Dkt. 783, pp. 4-5.
5. On July 1, 2020, Lunsford sent Plaintiffs an invoice ("Invoice") requesting \$9,915.13 in fees and expenses for compliance with the Subpoena. Dkt. 801-1.

6. On July 10, 2020, Plaintiffs filed an opposition to the cost-shifting request, explaining (a) Lunsford and Hill failed to meet the legal standard for cost-shifting, and (b) the amount of Lunsford's Invoice was excessive. Dkt. 801.

7. Months later, on October 23, 2020, Lunsford sent Plaintiffs another invoice ("New Invoice"), seeking an additional \$7,341.35 in fees and expenses she purportedly incurred to comply with the Subpoena, for a total of \$17,256.48. *Exhibit 1*.

8. For the reasons stated in Plaintiffs' Opposition, which Plaintiffs incorporate herein, Lunsford and Hill failed to meet the legal standard for cost-shifting in the first instance, so the Court should rule that Plaintiffs have no obligation to pay for their alleged costs of compliance. *See* Dkt. 801, pp. 10-14.

9. Moreover, as detailed below, the New Invoice suffers from the same defects as the original Invoice, and therefore the Court should not shift these additional unreasonable costs to Plaintiffs.

10. As Plaintiffs explained in their Opposition, courts do not award fees or costs for administrative or ministerial tasks. *Chapman v. Astrue*, 2009 WL 3764009, at \*1 (W.D. Va. 2009) ("Conversely, it is not proper to award a full attorney rate for activities that should more effectively be performed by nonlawyers. Moreover, purely clerical tasks are ordinarily a part of a law office's overhead and *should not be compensated for at all.*") (citations omitted) (emphasis added).

11. The New Invoice charges Lunsford's full attorney rate of \$350 per hour for clerical tasks like copying, converting and uploading electronic files. *Exhibit 1*. Plaintiffs should not have to pay for these services at all, and they certainly should not be required to pay attorney rates for them.

12. Lunsford charged her full attorney rate for clerical work even though she used an intern for work disclosed in her original Invoice. Dkt. 801-1. Even if that intern were unavailable for the clerical work on the New Invoice, Lunsford should not be permitted to overcharge by assessing attorney rates for ministerial tasks. The fact that Lunsford is performing the ministerial work does not convert it to legal work for which she can charge a full attorney rate.

13. Lunsford's alleged costs are also excessive. The New Invoice asserts she spent 19 hours – nearly two and a half full business days – copying, converting and uploading electronic files. *Exhibit 1*. But those are computer-automated tasks where a computer, not a person, incurs the time to electronically process files. There was no reason for Lunsford to sit at a computer for 19 hours watching it process files.

14. Lunsford also seeks fees for entirely unnecessary tasks, such as \$280 for writing a cover letter to Plaintiffs' paralegal stating that Lunsford had transmitted the files to Plaintiffs. *Id.*

15. For the foregoing reasons, and the reasons stated in Plaintiffs' Opposition, the Court should deny Hill and Lunsford's request for cost-shifting and should reject the invoices Lunsford has submitted.

Dated: November 23, 2020

Respectfully submitted,

/s/ David E. Mills

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### CERTIFICATE OF SERVICE

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